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ABSTRACT

Exposure to asbestos in the air poses serious health threats, particularly to children. The use of asbestos in schools after World War II may have exposed millions of persons before regulations controlling asbestos use began appearing in the 1970s. Federal efforts to reduce exposure to asbestos have included passage of the Asbestos School Hazard Detection and Control Act of 1980 and the Asbestos School Hazard Abatement act of 1984, as well as regulations promulgated by the Environmental Protection Agency (EPA) in 1982. The federal government's failure to pursue or provide funding for its asbestos abatement programs adequately has forced schools to go to court for relief, and court decisions have substituted for regulations. Asbestos litigation can involve traditional theories of negligence, conspiracy, nuisance, enterprise liability, strict liability, and breach of warranty, as well as equity and bankruptcy law. Schools seeking relief should consider all theories of liability and all potential defenses of such suits. Schools unsuccessful in litigation or in applications for government assistance should strongly consider engaging in asbestos abatement in any case, given their potential liability in personal injury suits. Several relevant court cases are cited. (PGD)

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Factual Material

Asbestos refers to a group of fibrous, incombustible, magnesium and calcium silicate minerals.[1] It is a valuable product with many uses, including heat and noise insulation and use as a binder.[2] Asbestos has a tendency to separate into tiny fibers. If these fibers become airborn and are subsequently inhaled into human lungs, death or disablement may result.[3]

Asbestos is the only known cause of mesothelioma, a painful and fatal cancer of the lining of the lungs or stomach.[4] Asbestos is also the cause of other disabilities, including asbestosis, a scarring of the lungs that progressively hinders breathing capabilities.[5]

At least one court has concluded that the asbestos manufacturing industry knew about the dangers of airborn asbestos fibers as early as the mid-1930's.[6] Despite the danger, the industry was "silent with respect to the dangerous relationship between asbestos and cancer."[7] Further, a convincing case can be made based on industry documents produced in litigation that certain industry officials actively sought to obscure information relating to asbestos and fatal diseases.[8]

Spraying material containing more than 1% asbestos for fireproofing or insulation purposes was banned by the Environmental Protection Agency (EPA) in 1973.[9] The EPA regulations were promulgated under the authority of the Clean Air Act to prevent asbestos fibers from contaminating outdoor ambient air. However, it later became apparent that these regulations were not sufficiently broad because they only banned use of asbestos as an insulation and fireproofing material but not for decorative purposes.[10] As a result of this concern, in 1978 the EPA amended the regulations to ban asbestos spraying for any purpose.[11]

Asbestos exposure poses a serious health threat to the general population. Inhaled asbestos fibers deposited in the lungs remain there throughout the individual's lifetime. Subsequent exposure to asbestos adds to the body's burden of retained fibers.[12]

Scientific evidence strongly supports the contention that children face a greater risk of developing asbestos-related cancer

than adults. Mesothelioma generally occurs in the sixth or seventh decade of life, usually 20-40 years after the victim's initial exposure to asbestos. This long latency period combined with other factors such as cigarette smoking, children's faster metabolic rate and increased activity increase the risk of cancer for children exposed to asbestos.[13]

Federal Regulations

Asbestos was first used in schools after World War II. From 1946 until the early 1970's when regulations began to be promulgated, tens of thousands of tons of asbestos products were used in American elementary and secondary schools and colleges.[14] The Environmental Protection Agency (EPA) estimates that 15 million children and 1.4 million employees spend time in schools containing asbestos.[15]

The EPA states that it cannot estimate how many children face possible future health problems as the result of attending classes in schools containing asbestos.[16] According to a 1983 EPA study of workplace exposure, for persons exposed to asbestos over several years, the probability of developing mesothelioma remains constant for an initial period and then increases continuously with time from the onset of exposure.[17] Based on the fact that children generally have higher metabolic rates than adults, the EPA estimates that a child exposed from age 5 to 10 has at least ten times the risk of developing mesothelioma as does an adult exposed to the same level of asbestos between the ages of 35 and 40.[18] Since children have longer remaining lifespans than adults, the lifetime risk that school children will eventually develop asbestos-related disease is significantly greater than that for asbestos workers.[19]

In response to these safety issues of asbestos containment in schools, Congress enacted the Asbestos School Hazard Detection and Control Act of 1980.[20] In that Act, federal funds were authorized for local educational agencies to conduct programs to find asbestos containing materials in the schools and take remedial action to assure the safety of school children and employees. Federal

regulations promulgated by the Department of Education set out procedures and criteria to make funds available.[21] Under the regulations, funds were to be made available to assist eligible schools in identifying asbestos hazards. Interest-free loans were also authorized to assist in the correction of those hazards. However, no funds were made available under the provisions of that Act.

In 1982, the EPA enacted regulations to address the problem of asbestos in schools,[22] under the provisions of the Toxic Substance Control Act (TSCA).[23] The EPA regulations required local education agencies to inspect school buildings to identify asbestos materials. Under the regulations, school officials must sample and analyze all friable materials for asbestos. They are then required to notify parents and employees of ways to minimize exposure to asbestos and its potential hazards.[24] This rule exempts certain schools from its requirements. In most cases, these involve schools that inspected buildings for asbestos before the EPA mandate.[25] Compliance by affected schools was required by June 28, 1983. However, the deadline proved ineffective. The EPA reported that approximately two-thirds of affected schools failed to comply with the law.[26]

In 1984, Congress enacted the Asbestos School Hazard Abatement Act.[27] Under its provisions, a scheme of reporting asbestos-containing materials in the schools was mandated and a format for applying for both loans and grants outlined.[28] The Act requires the governor of each state to submit procedures for recording the presence of asbestos in schools to the administrator of the EPA.[29] The report must also indicate any current asbestos abatement activities conducted by the local educational agencies[30] and repairs made to restore school buildings to conditions comparable to those that existed before the abatement activities were undertaken.[31]

Moreover, annually the governor must submit to the administrator and to the department of education a priority list of all public and private schools in the state that are candidates for asbestos abatement.[32] Each year the governor must also forward applications for financial assistance prepared by the local educational agencies

to the administrator of the EPA and to the department of education.[33] The administrator of the EPA then considers the applications and places them on a national priority list.[34] The department of education reviews this information and may make comments or recommendations within 60 days.[35] The EPA must then approve or disapprove applications for financial assistance within 60 days.[36]

The EPA then provides financial assistance on a school-by-school basis to the local educational agencies.[37] Interest-free loans for up to 100% of the abatement costs may be granted[38] as well as grants for up to 50% of the costs of abatement.[39] In awarding the grants, EPA must indicate with particularity why a grant was given, rather than a loan.[40]

Congress has authorized $50 million each for the calendar years 1984 and 1985.[41] $100 million has been authorized for each of the five succeeding years.[42] On June 6, 1985, the EPA announced awards of $45 million in grants and loans for the fiscal year to assist in asbestos abatement in needy schools.[43] The EPA selected 341 schools from 4,800 applicants for federal funding under the Act.[44]

Although the EPA has made some funds available many schools are still wondering where the money for abatement activities will come from.[45] The department of education has calculated the average cost of removal per school building as approximately $100,000.[46] A recent internal EPA report in 1984 found that 31,000 schools contain friable asbestos material that contains more than 1% asbestos[47] and estimated the national cost of asbestos abatement at approximately $3 billion.[48] Looked at on a national scale, the $45 million allocated by the EPA represents only 1.5% of the amount necessary for asbestos abatement. Thus, many schools already facing cutbacks from earlier budget problems are squarely confronted with the issue of finding the money for asbestos abatement activities.[49] Ignoring the problem or closing the doors of schools that require abatement are the only other alternatives.[50]

The issue has recently heated up. In March 1984, the EPA signaled tougher enforcement of asbestos rules by fining a New

Hampshire school district $24,000 for failure to inspect and report asbestos.[51] Since then, many other school districts have been fined for failure to inspect and report.[52] At about the same time, the EPA announced that it may commence civil actions against school districts that have not adequately dealt with the health problems posed by crumbling asbestos.[53]

The EPA has been soundly criticized on a number of issues relating to their regulation of asbestos materials. One concern has been the failure of the EPA to specify in their regulations how to conduct tests for asbestos, pursuant to the 1982 mandate, and what to do about the problem other than notifying parents and employees of the findings.[54] Identifying asbestos-containing materials is, in some ways, the easy part; schools must then decide how to handle friable asbestos. School officials have indicated that the EPA offers little guidance and that consultants offer conflicting advice.[55] Some schools claim that it's also difficult to find competent architects, contractors and engineers to take on the projects.[56] The EPA has not offered assistance in this important matter.

School officials in dealing with asbestos, essentially have three options: remove the asbestos, encapsulate it by spraying a barrier over it, or enclose it with materials such as sheet rock or tile.[57] Removal is the only permanent solution, but it is the most expensive. Furthermore, if asbestos is removed improperly, fibers are released, creating a worse health hazard.[58] Encapsulation and enclosure are often cited as adequate and cheaper options, but problems may occur because the asbestos remains in the buildings and continues to be a potential health hazard.[59]

The EPA has acknowledged that current voluntary guidelines may be inadequate.[60] A recent survey by the EPA found that although 67% of schools have voluntarily taken action to control asbestos through removal, enclosure, encapsulation and the implementation of special operation and maintenance programs,[61] only 34% of the school districts have complied with the major requirements of the 1982 rule.[62] Since the 1982 rule requires only

inspection and reporting of asbestos, it is probable that identification and abatement activities remain to be initiated in many schools.

No one is certain, how long the EPA will retain jurisdiction on asbestos regulations.[63] On January 31, 1985, the EPA made the decision to transfer authority over regulating cancer-causing substances, like asbestos, to the United States Labor Department's Occupational Safety and Health Administration (OSHA) and to the Consumer Product Safety Commission (CPSC).[64] The transfer of authority pursuant to section nine of the Toxic Substances Control Act (TSCA),[65] would mean the EPA's proposed rulemaking would be shelved for the time being.[66] Any regulations by OSHA or CPSC would have to be made in compliance with those agencies' rules. The result may effectively halt further asbestos regulation for a substantial period of time. The decision was severely criticized. The EPA withdrew the decision for further consideration a month after it was made.[67]

Critics of the transfer argue that the decision to transfer regulation of asbestos violates the provisions of TSCA.[68] Critics indicate that the evidence suggests that the transfer was suggested solely by the Office of Management and Budget (OMB).[69] OMB opposed EPA proposals to ban several uses of asbestos immediately and then to phase out all other nonessential uses.[70] Those who oppose the transfer accuse OMB of attempting to quash proposed rules before they are issued.[71] EPA officials admit that they had been pressed by OMB to weigh the dollar value of human life when considering how to regulate asbestos.[72]

In the meantime, some localities are taking the asbestos dilemma into their own hands. Besides increased efforts by schools to rid their classrooms of dangerous asbestos, school officials are now taking a harder look at asbestos contamination in the school environment.

In Merrick, New York, a law has been proposed to protect school children who walk by a local manufacturing facility that uses asbestos.[73] The proposed law would provide for closer

monitoring on any local manufacturer that uses asbestos and would ban opening any new business that uses the substance. The school in question is three blocks away from the manufacturer. About fifty children walk by the plant on their way to and from the elementary school each day.[74]

Laws addressing the asbestos abatement question have generally revolved around EPA mandates and local concerns. State statutes dealing with this question also echo federal concerns. Many have been recently enacted in compliance with the 1984 Act or in order to provide funding for abatement projects within a reasonable time.[75]

Asbestos Litigation

Property Damage Cases

Many asbestos-related issues revolve around the question of funding for abatement activities. Recently, school districts faced with asbestos containment problems have commenced lawsuits against asbestos companies to recover the costs of removing it as well as punitive damages against the manufacturers.[76]

The new property damage lawsuits are based on the presence of asbestos in the building, rather than evidence of asbestos fibers in the air.[77] These cases differ from the asbestos-related personal injury cases where the injury is already manifest. The idea that the mere presence of asbestos in a building is the basis of a property damage lawsuit is a new concept and has yet to be widely tested.[78]

In April 1984, however, U.S. Gypsum Co., a leading asbestos producer, reached a $675,000 settlement in a property damage suit over the use of asbestos in schools in Lexington County, South Carolina.[79] Since then a flood of cases have opened against asbestos companies nationwide. To date, however there have been virtually no other settlements.

The first jury to decide a school property damage suit returned a verdict in favor of the asbestos manufacturers, U.S. Gypsum Co. and National Gypsum Co., March 12, 1985.[80] It is believed that fiber counts, which showed a lower level of asbestos

in the school prior to the ripout of acoustical ceiling plaster, played a major factor in the jury's decision. Another factor that may have worked against the plaintiff school was that the school board had filed two lawsuits in the 1970's against the architect and the contractor who built the schools for damages due to a leaky roof. The court permitted the jury to consider the leaky roof as an intervening cause for the release of asbestos in the air. The second lawsuit was settled in 1979 for $265,000. Anderson County subsequently made motions to amend the judgment, for a directed verdict, and for a new trial. The motions were refused.[81]

On August 15, 1985, a second verdict favoring asbestos producers was returned. In Spartanburg County School District No. 7 v. National Gypsum Co.,[82] a jury in federal district court rejected liability claims for the $284,000 cost of repairing five school buildings in Spartanburg, South Carolina that had been outfitted with acoustical ceiling plaster containing asbestos.

In Spartanburg, National Gypsum Co. successfully argued that their products did not represent an unreasonable risk to health because of the low level of ambient asbestos generated by typical use of the building. National Gypsum also successfully introduced evidence that their products were the "State of the Art," subject to no scientific or medical doubts at the time of installation.

The plaintiff school district in Spartanburg plans an appeal. Cocounsel for Spartanburg claims that their case was adversely affected by the exclusion of evidence about the defendants' knowledge of the hazards of asbestos prior to the installation of the product.

As a result of these cases, National Gypsum plans to vigorously defend future asbestos property damage cases, rather than settle.

At least in one respect, Spartanburg gave additional credibility to property damage claims. Many manufacturers of asbestos argue that schools have suffered only "economic loss" and should be dismissed without a trial because they are not actionable in

tort and are usually barred by the contract statute of limitations, Spartanburg was the latest in a long-line of cases to reject that theory.[83]

In October 1984, a federal district judge in Philadelphia approved a lawsuit against fifty-five asbestos manufacturers on behalf of all of the primary and secondary schools in the United States.[84] This is the first nationwide-wide class action suit for property damage arising out of a product liability question.[85] The purpose behind bringing a class action suit for property damages is to limit redundancy. In the class action certification decision Judge James McGirr Kelly stated, "In my view the school asbestos litigation is uniquely suitable to class action treatment. Instead of hundreds of thousands of school asbestos cases in separate forums, the litigation would be concentrated in a single forum, thereby, economizing litigation expenses."[86] Attorneys who favor the class action suit have stated that a major benefit of the class action is that it immediately brings into court hundreds of school districts that probably would not be able to afford expensive asbestos litigation.[87] Under Judge Kelly's ruling, school districts that have already spent money to remove asbestos would be able to use the class action to recover their costs from the asbestos industry.[88] As other schools incur such expenses, they, too, would be able to seek compensation.[89] The class may include as many as 14,000 schools.[90] Judge Kelly's certification, however has been challenged in the District Court of Appeals for the Third Circuit. If it is upheld, the class action will create a mandatory class for punitive damages and a permissive class for actual damages.[91] Actual and punitive damages in the case are currently estimated at $1.4 billion.[92]

Theories of Liability

At the same time, individual suits have been increasing at a high rate. By October 1984 there were sixty lawsuits pending and many more are expected to be filed.[93] The individual lawsuits are proceeding on a number of theories. The most effective theories

for recovery in an asbestos property damage lawsuit may depend on how the school responds to the problem.

Potential defendants in asbestos litigation include architects who selected asbestos materials for use in the school, general contractors and subcontractors who installed asbestos materials, distributors or suppliers of the material, and manufacturers of asbestos-containing materials.[94]

In order to effectively sue for recovery against any of these parties, however, the school may have to abate the asbestos threat at its own expense and immediately sue to recover costs for their remedial actions.[95] This theory involves a consideration of the principles of equitable restitution.

Equitable restitution is discussed at length in a report prepared for Congress by the United States Department of Justice (DOJ).[96] The DOJ report concludes that the most effective remedy for schools may be to institute civil lawsuits against the manufacturers of asbestos materials found in the schools. The DOJ report states:

> Restitution appears to be the most desirable remedy from the prospective plaintiff's standpoint, because it most fits the problem and also may offer the most appropriate and favorable treatment in terms of statutes of limitation. The school districts could allege that the manufacturers who supplied friable asbestos for use in classrooms without warning that asbestos fibers are dangerous, and without testing to determine the danger in an environmental as opposed to an occupation setting, have a duty to abate the resultant hazard and must compensate the party abating the hazard.[97]

The DOJ report relies primarily on The Restatement of the Law of Restitution and the Supreme Court interpreting the Restatement to support its conclusion. Under the "Public Emergency Assistance Doctrine" of the Restatement, a party is entitled to restitution for expenses if, e.g., it "removes an obstruction or makes repairs

upon a public road which has become imminently dangerous for the traveling public, if the town or persons whose duty it is to care for the road fails to do so."[98]

The DOJ report concludes that where friable asbestos materials present a situation that is imminently dangerous to the student public, a case for recovery may be made. It argues that asbestos manufacturers who created the condition should be found liable to schools that have abated the asbestos threat at their own expense, since the manufacturers themselves failed to make the necessary repairs.[99]

The DOJ report bases its application of the Restatement to asbestos on a Supreme Court case that dealt with an analogous situation. In Wyandotte Transportation Co. v. United States,[100] the United States Government removed a sunken barge containing lethal chlorine gas from the Mississippi river. The barge was considered a public hazard. The Court held that the government was entitled to "place the responsibility for removal upon those who negligently sank the vessel."[101] The Court relied on the provisions of the Restatement, emphasizing (1) that the immediate removal of the barge was essential, and (2) that the negligent owners of the barge refused to remove it.[102]

One of the most significant drawbacks to employing an equitable restitution theory to all asbestos cases is that it requires the school to fund the remedial program outright and depend on the uncertainties of litigation for reimbursement.[103] In some cases, a school may simply not be able to afford the risk of spending money up front that may never be recovered.

Traditional theories of negligence, strict liability and breach of warranty, conspiracy, nuisance and enterprise liability have generally been more frequently employed than the equitable restitution theory. A New Jersey case, Cinnaminson Township Board of Education v. National Gypsum Co.,[104] was based against manufacturers on strict tort liability, breach of express and implied warranties of fitness and merchantability and negligence. Attorneys for the case did not argue the equitable restitution theory because

New Jersey, unlike most states, permits recovery of economic loss under tort law.[105]

A similar suit in Texas, Dayton Independent School District v. United States Gypsum Co.,[106] relied principally on an argument under the state product liability law that asbestos-containing material in schools is defective and inflicted property damage on school buildings. However, attorneys for the case included an equitable restitution argument in their brief.[107]

One significant drawback to employing any theory of liability is the problem of determining which manufacturer was actually responsible for the installation of asbestos. Many schools, particularly older schools, may have lost records crucial to pinpointing the identity of manufacturers, distributors, or suppliers of friable asbestos in their schools. Many schools also face the complex problem of determining who is primarily liable where several manufacturers have supplied asbestos. In many cases it is impossible to determine one company's liability over another.[108]

In Borel v. Fibreboard Paper Products Corp.,[109] the court acknowledged the difficulty in determining which manufacturer was actually responsible for the plaintiff's injury. The plaintiff stated for the record that he had developed mesothelioma and asbestosis during a long history of exposure to asbestos products. The plaintiff argued that asbestos was "unreasonably dangerous,"[110] and sued general manufacturers of asbestos who, he claimed, were responsible for his medical condition. The plaintiff claimed that he was unaware of the dangers of asbestos exposure and was not warned of any dangers by the manufacturers who had a duty to warn. The jury verdict in favor of the plaintiff on strict liability theory was affirmed by the reviewing court.[111] The court in Borel decided that all involved manufacturers should be held "jointly and severally liable."[112]

The Borel decision permits the injured plaintiff to recover in cases where no one manufacturer can be identified for liability. Borel also stands for the proposition that manufacturers knew or should have known of the dangers asbestos posed to workers.[113]

As a result, some legal commentators have recommended that the doctrine of collateral estoppel be utilized to keep defendants from relitigating the issue of medical knowledge, because the defendants in the majority of cases have litigated the issue and lost.

Such an approach to the asbestos issue is clearly advantageous to schools seeking compensation to recover the cost of an asbestos cleanup. If Borel permits individuals to recover for asbestos-related injuries by suing all the manufacturers of asbestos generally, schools might also sue on an analogous theory, claiming that installation of asbestos was "unreasonably dangerous." This approach might be particularly helpful to those schools lacking a complete record indicating who is responsible for asbestos installation.

Another problem that schools must deal with is the special problem that statutes of limitation pose to the prospective plaintiff. Under traditional rules of strict liability and negligence, the time allowed for bringing a suit begins to run at the time the plaintiff is exposed to the harmful substance. The problem with this approach when applied to latent diseases, like those caused by asbestos, is that it often leads to harsh results. Because it may take years for an asbestos-related disease to show up, the typical three or four years allowed for such a case to be brought may well be run before the plaintiff realizes he has been injured. As a result, the injured party has no recourse against manufacturers or other parties responsible for his medical condition.[114]

Some courts, responding to the harsh results of the traditional rule, have adopted the "discovery rule."[115] Under the discovery rule, the plaintiff is permitted to recover even when the injury has taken a long time to develop. Once the plaintiff discovers the injury, or through reasonable care should have discovered it, the statutory period begins to run.

Other courts which might have adopted the "discovery rule" by judicial precedent have not because of their firm belief that any change from the traditional rule to the "discovery" type approach must be the result of legislative rather than judicial action.[116]

When the Supreme Court of Virginia faced this particular issue in Locke v. Johns-Manville Corp.,[117] it applied an even different approach to the question. Under a statute of limitations that began to run when the plaintiff was injured, the court held that medical evidence determines when the injury occurred. According to this holding, medical evidence may pinpoint the date any time from an initial exposure to asbestos until the moment the asbestos-related disease is discovered.[118]

The Locke decision has been attacked by critics as being essentially inequitable. Under this decision, two plaintiff's with similar diseases might be treated differently depending on the physical manifestations of asbestos-related disease. Critics also point to the fact that because of the broad interpretation of what constitutes an injury, the statute would probably begin to run at an early point in many asbestos cases, prejudicing the plaintiff's case.

As a statute benefiting schools who might wish to recover for asbestos abatement, the discovery rule is most advantageous. Because schools did not discover the injurious character of asbestos in their schools until recently, the schools could argue that they had no knowledge or notice that an asbestos cleanup was necessary. Furthermore, the government has only recently enacted laws that take remedial action in schools where asbestos is found. This may constitute evidence that the general public has only recently discovered the general health threat posed by the presence of asbestos in their schools. Since the health threat has only recently been discovered, the statute of limitation should begin to run when the inspection for asbestos in the plaintiff school has been completed.

School districts have explored a wide variety of legal theories to support their claims for damages.[119] As a result, a miscellany of other cases have arisen dealing with asbestos exposure.

For example, in September 1984, the New Jersey Education Association filed a lawsuit against 157 school boards and 125 manufacturers and contractors for the cost of medical check-ups for school employees exposed to asbestos hazards.[120] The suit does not

seek a specific dollar amount, but rather asks for compensatory and punitive damages that the union claims may be put in trust to pay for periodic check-ups for the 60,000 teachers, custodians and other school employees who have been exposed to asbestos.[121]

Insurance Issues

One of the largest asbestos-related lawsuits revolves around insurers liability for asbestos claims.[122] In March 1985, a trial in San Francisco commenced by five former asbestos producers against more than 75 insurers over allegedly illegal denial of coverage of asbestos claims. The damage potential in the case is in the multibillions.[123] The key issue in the case is which policies cover personal injuries due to asbestos exposure, those in effect when people were exposed to asbestos or those in effect when the injuries manifested themselves.[124]

The case developed around the Supreme Court's refusal to settle a conflict over insurance liability for asbestos-related diseases.[125] In March 1983, the Supreme Court let stand a ruling by the federal appeals court in Boston that a manufacturer is covered for the asbestos-related diseases of its employees by the insurance policy in effect when the disease becomes "manifest."[126] The "manifestation" theory is the third distinct answer given by a federal appeals court to the question of what triggers insurance coverage liability in asbestos-related disease.[127] The courts of appeals for the Fifth and Sixth Circuits, which have jurisdiction in parts of the south and middle west have adopted an "exposure" theory. Under this theory, the insurance company that covered the manufacturer when the worker was <u>exposed</u> to asbestos is liable for the claim.[128] The third theory, a so-called comprehensive theory, triggers insurance coverage by any and all aspects of the disease process: initial exposure, the latency period in which asbestos particles remain in the lungs, and symptomatic disease.[129] The District of Columbia Court of Appeals has adopted this approach.[130] The result of these disparate theories is that an insurance company's liability for paying asbestos claims depends on where a

lawsuit is filed.[131] One of the major reasons for the confusion is that insurance companies wrote, and manufacturers obtained insurance for many years before the danger of asbestos was widely known.[132] The typical insurance policy indemnified the manufacturer for "injuries" caused by an "occurrence."[133] Since it takes many years for asbestos-related disease to develop, the definition of those words is far from clear.[134]

In the meantime, insurers are frightened because of a plethora of verdicts against them in recent years.[135] Claims for health problems related to asbestos exposure have already reached $12.5 billion.[136] As a result, it has been increasingly difficult for contractors in the asbestos removal business to get proper insurance.[137] This problem could drive companies out of the asbestos cleanup market, leaving the field to small uninsured contractors who can fold up shop after a job.[138] Adding to the dilemma is the fact that many schools require contractors to have insurance for asbestos abatement activities.[139] As a result, some states have enacted laws requiring licensing of contractors for asbestos removal.[140] This, along with EPA programs for certification of asbestos removal, may not alleviate the full spectrum of problems associated with the recent crunch on asbestos removal by insurance companies, but it may give schools some security as well as assure them that the quality of asbestos removal work is adequate.

Bankruptcy

One relatively new issue in asbestos litigation concerns whether asbestos litigants will ever be able to recover damages. In August 1982, the Manville Corporation, the largest supplier of asbestos in the world, filed for bankruptcy under Chapter 11 of the Bankruptcy Act of 1978.[141] Manville Corporation followed UNR Industries, another asbestos-related concern, into court.[142] Since then two other asbestos manufacturers have filed for Chapter 11 protection.[143] At the time of the filing Manville was in sound financial health; its net worth exceeded $1.1 billion, it was able to pay debts as they became due, and was in every other respect

solvent.[144] Nevertheless, Manville and others have sought the protection of bankruptcy laws in order to avoid the high cost of compensating victims of asbestos-related disease.

Immediately upon filing its bankruptcy petition, Manville brought to a halt approximately 16,000 lawsuits pending against it.[145] Section 362 of the Bankruptcy Code provides that a petition stays the commencement or continuation of the judicial proceedings against the debtor who commenced or could have started a proceeding before the bankruptcy petition was filed.[146]

By filing under Chapter 11 of the Bankruptcy Act, Manville and the others hope to have all of its asbestos claims estimated and discharged pursuant to a bankruptcy plan, and without a jury trial.[147]

Their strategy is beginning to bear fruit. In late July 1985 a bankruptcy reorganization plan proposed a $50 million cash payment to settle all asbestos property damage claims. This amount represents only a fraction of the value of asbestos abatement claims against Manville. The total value of claims asserted for schools, hospitals and public buildings is estimated at $50 billion to $81 billion.[148]

Recently, however, Manville spokesmen have contended that a serious discount is justified because property claims have not proven successful when heard by a jury.[149]

The viability of the bankruptcy settlement may in fact depend on the performance of property damage lawsuits. If current lawsuits continue to be unsuccessful they may strongly influence proposed bankruptcy settlements.

Conclusion

The EPA has a prominent role in asbestos abatement from a regulatory standpoint. However, because of the agency's failure to take an active role in or to provide large scale funding many schools have no recourse but to pursue their remedies in court. As a result, it is asbestos litigation that is effectively serving the regulatory function.

Asbestos litigation involves a complex consideration of traditional theories of negligence, conspiracy, nuisance, enterprise liability, strict liability and breach of warranty, as well as the law of equity and bankruptcy. Schools searching for relief from asbestos hazards should consider all theories of liability and all potential defenses in such suits. Plaintiff schools should also consider the statutes of limitation in their particular jurisdictions, as well as the potential effect of the bankruptcy laws on their prospective claims.

If a school is unsuccessful in their lawsuit against asbestos defendants or they are classified as a priority for abatement activities by their state government, application for funding under the 1984 act may yield some results. However, schools with asbestos containment problems should not rely solely on contingent funding sources. The potential liability for personal injury due to asbestos exposure, as well as the health and safety of students and school personnel, may prove the high cost of abatement projects a worthy investment.

Notes

1. Dorland's Illustrated Medical Dictionary 152 (25th ed. 1974).
2. United States Department of Justice, The Attorney General's Asbestos Liability Report to the Congress prepared pursuant to section 8(b) of the Asbestos School Hazard Detection and Control Act of 1980, at i (Aug. 1981).
3. Id.
4. Reitze, Nicholson, Holdday & Selikoff, Application of Sprayed Inorganic Fiber Containing Asbestos: Occupational Health Hazards, 33 Am. Indus. Hyg. Ass'n J. 178 (1972).
5. Id. at 178. See also Commercial Union Insurance Companies, Environmental Task Force, Asbestos--A Social Problem 12-14 (May 12, 1981). The Task Force estimates that 67,000 cancers per annum or 17% of all cancers detected annually in the United States by the year 2015 will be attributable to asbestos exposure.
6. See supra note 2, at i.
7. Hardy v. Johns-Manville Sales Corp., 509 F. Supp. 1353, 1355 (E.D. Tex. 1981).
8. See supra note 2, at 34. For further treatment of this subject, see Asbestos Litigation Rep. (Feb. 7, 1979).
9. 38 Fed. Reg. 8,826 (1973).
10. See supra note 2, at 51.
11. 43 Fed. Reg. 26,372 (1978). Although the spraying of asbestos-containing materials has been banned, the application of asbestos products by trowel has not. See supra note 2, at iii.
12. Oversight Hearings on Asbestos Health Hazards to School Children: Hearings on J.R. 1435 and H.R. 1524 Before the Subcommittee on Elementary, Secondary, and Vocational Education, 86th Cong., 1st Sess. 298 (1979).
13. Id. at 298.
14. See supra note 2, at ii. A recent EPA study found that buildings constructed in the 1960s were more likely to contain friable asbestos than other buildings. See EPA issues New Asbestos Study, Washington Post, Oct. 22, 1984, at A19, col. 1.
15. Silas, Asbestos Free: Schools, Others Sue Companies, 71 A.B.A.J. 22 (1985).
16. 35 U.S. School Boards Sue to Force Manufacturers to Remove Asbestos, New York Times, May 20, 1984, at 30, col. 1.
17. Lang, The Problem of Asbestos in the Public Schools, N.Y.S.B.J. 19 (Nov. 1984).
18. Id.
19. Id.
20. Pub. L. No. 96-270, 94 Stat. 487 (1980).
21. 34 C.F.R. § 230-31 (1981).
22. 47 Fed. Reg. 23,360 (1983).

23. 15 U.S.C. §§ 2601-2609 (1976).

24. 47 Fed. Reg. 23,360 (1983).

25. Id. It is important to note that the EPA has specific technical guidelines that must be consulted before a school attempts an inspection. In 1979, the EPA determined that a procedure widely used for inspection, X-ray diffraction, was faulty and sent booklets to school districts advising them to use another procedure, Polarized Light Microscopy (PLM), that is better able to detect asbestos contamination. In 1982, these advisory standards became mandatory and schools that had not tested for PLM were required to do so by June 28, 1983. The rules stressed that X-ray diffraction alone was not acceptable. For specific guides, see 46 Fed. Reg. 4544 (1982).

26. Killer in the Classroom, New York Times, Nov. 13, 1983, at E20, col. 1. Only elementary and secondary schools are affected by the current laws. This presumably exempts colleges from inspection as well as funding.

27. 20 U.S.C. § 4011 (1984).

28. Id. The loan/grant program is being carried out by a new group recently formed at EPA called the Asbestos Action Program, which was set up specifically to assist school officials and the general public in carrying out asbestos abatement activities. Besides the loan/grant program, the Asbestos Action Group will be helping to set up asbestos information centers around the country, which will serve, among other things, as formal training centers for abatement contractors, school officials and the general public. The Action Group has also distributed material to state governments to help them establish a certification program, as a way of assuring that asbestos abatement contractors perform their work competently and safely. Environmental News, press release issued by the EPA on June 6, 1985, at 3.

29. 20 U.S.C. § 4013(a)(1),(2),(3).

30. Id. at (a)(2).

31. Id. at (a)(3).

32. Id. at (b)(1).

33. Id. at (b)(1)(A). The priority list must rank the potential candidates for abatement action based on the kinds of existing exposure problems and how great they are. Each statement of need must have gubernatorial certification contained in the application for financial assistance. Detailed considerations of need are listed in the regulations.

34. 20 U.S.C. § 4014(b)(2).

35. Id.

36. Id. at (b)(3).

37. Id. at (c)(1).

38. Id. at (e)(1).

39. Id.

40. Id. at (e)(2).

41. 20 U.S.C. § 4021(a)(1).

42. Id. Funds are to remain available until used. A condition of an award under this grant program stipulates that the recipient of the grant subrogates his right to bring a lawsuit against any liable parties. See 20 U.S.C. § 4017. The EPA's commitment to implementing the provisions of the Asbestos Schools Hazard Abatement Act of 1984 has been questioned. In September 1984, John A. Moore, EPA assistant administrator for pesticides and toxic substances, was quoted as saying the EPA would not seek further funds for the asbestos abatement grant program. His position was that it was simply too early for EPA to know what funds would be needed in the future. See Shabecoff, E.P.A. Seeks No Money for School Asbestos Plan, New York Times, Sept. 27, 1984, at A18, col. 1. The same day, in an EPA press release EPA further stated that most schools with asbestos problems were presently taking action to correct the problems. EPA indicated that they believed that their efforts to appropriate funds might hinder asbestos abatement efforts. See Marriott, EPA to Scale Back Funds For Asbestos Removal, Washington Post, Sept. 27, 1984, at A14, col. 3 and E.P.A. Tells Asbestos Stand, New York Times, Sept. 28, 1984, at B7, col. 3.

43. Environmental News, supra note 28, at 3.

44. Id. at 3.

45. See supra note 26, at col. 1. Recently, state legislatures have passed laws to permit the state to market bonds for low-interest loans through state bonding authorities. See Navaez, Aid to Remove School Asbestos Voted in Jersey, New York Times, Sept. 14, 1984, at B2, col. 1; Proposed Bond Issues, The Massachusetts Senate, United Press International, May 13, 1985.

46. Id. at col. 1.

47. See supra note 17, at 20.

48. Id.

49. Id.

50. Id.

51. Peterson, EPA Fines New Hampshire Schools for Asbestos Violation, Washington Post, Mar. 14, 1984, at A25, col. 4.

52. U.S. Fines School Board on Asbestos, New York Times, Aug. 4, 1984, at 28, col. 3.

53. School Districts Face Suits Over Asbestos Pollution, Wall Street Journal, Mar. 5, 1984, at 7, col. 1.

54. Sullivan, Lack of Standards and Controls in Jersey Asbestos Problem, New York Times, Sept. 5, 1984, at 15, col. 2. The EPA does not mandate removal of asbestos from schools. The federal government requires asbestos removal only when a building is being torn down. See Insurance Problems Hinder Asbestos Removal at Schools, New York Times, Apr. 22, 1985.

55. Roberts, Schools at a Loss When Handling Asbestos Hazard, Wall Street Journal, Mar. 26, 1985, at 33, col. 2. The EPA has also announced that they will notify the local news media of any schools in violation of asbestos rules. See Schmidt, Huge Cost of Removing Asbestos Daunts School, New York Times, Oct. 5, 1983, at 15, col. 2.

56. Id.

57. Id.

58. Id.

59. Id. There are plenty of horror stories about each option: New Jersey hurriedly removed asbestos from 300 of their schools last summer. Later, investigators found that workers flushed asbestos down toilets and spread it to clean areas. A Kingston, New York school district encapsulated asbestos several years ago at the recommendation of its insurer. Now some of the asbestos is crumbling again, and an architect is recommending removal. See also Eckholm, Asbestos Removal: Drudgery and High Tech., New York Times, Sept. 8, 1984, at 1, col. 3. EPA's technical guidelines have also been criticized as grossly inadequate. See E.P.A. Fact Sheet on Asbestos Called Inadequate by Aide, New York Times, Jan. 23, 1984, at A17, col. 2.

60. Pasztor, U.S. is Considering Rules to Clean Up Asbestos in Schools, Wall Street Journal, Feb. 23, 1984, at 18, col. 3. The EPA has recently announced that it will require public schools to observe federal exposure limits in asbestos abatement projects. The limits, specified in OSHA rules, previously covered only private schools. The EPA's action was in response to a request by Service Employees International Union (SEIU), which represents public school workers. The OSHA rule limits worker exposure to breathable asbestos fibers to two fibers per cubic centimeter or 1.5 million fibers per cubic yard, over an eight-hour period.

    The EPA also will require anyone beginning an asbestos abatement project using public employees to notify the EPA ten days in advance so that it could make an inspection. See U.S. Asbestos Rule Extended, New York Times, June 26, 1985, at D26, col. 3.

61. EPA Releases Results of Survey on Asbestos in Schools, 21 Trial 74 (1985).

62. Id. at 75.

63. Shabecoff, Budget Office Disputed on Cost Basis for Asbestos, New York Times, Apr. 17, 1985, at B28, col. 1.

64. Id. at col. 5.

65. See supra note 23, at §§ 2601-2609.

66. Shabecoff, E.P.A. to Transfer Authority over Asbestos to Two Agencies, New York Times, Feb. 1, 1985, at 11, col. 3.

67. See supra note 63, at col. 5.

68. See supra note 23, at § 9. The EPA stated that the transfer may violate TSCA because OSHA lacks the authority to ban substances. CPSC can ban products, but only to protect consumers. Thus, the transfer may substantially hinder asbestos ruling-making as it affects schools. See Taylor, EPA, Bowing to Critics, to Reconsider Decision Not to Phase Out Asbestos Use, Wall Street Journal, Mar. 11, 1985, at 10, col. 3.

69. See supra note 63, at col. 1.

70. Id. at col. 6.

71. See supra note 66, at col. 3.

72. See supra note 63, at col. 6. The EPA has recently decided to issue its own rules regulating asbestos. For further discussion of this decision see Shabecoff, Budget Office Attacked Over Rules for Asbestos, New York Times, Oct. 4, 1985, at A32, col. 1.

73. Dysart, Limits on Asbestos Eyed, New York Times, May 5, 1985, at 4, col. 4.

74. Id.

75. Cal. Educ. Code § 39619.6 (West 1984), Abatement Fund for Asbestos Containment or Removal; Cal. Educ. Code § 49410.5 (West 1984), Reporting Asbestos Hazards in Schools; Ill. Educ. Laws 122 § 1403 (1984), Removal of Asbestos Materials; Ill. Educ. Laws 122 § 1411 (1984), Record Keeping of Asbestos Abatement Activities; La. Educ. Laws § 17:3701 (1981), Educational Facilites Asbestos Detection Program; Minn. Educ. Laws § 121.151 (1984), Cleanup v. Removal of Asbestos; Minn. Educ. Laws § 275.128 (1984), Authorized Revenues; Neb. Educ. Laws 79 § 4206 (1981), Asbestos Hazards in Schools; Neb. Educ. Laws 77 § 3424 (1981), Loans for Removal Detection or Containment; N.Y. Educ. Laws § 431 (McKinney Supp. 1983-84), School Asbestos Act; Okla. Educ. Laws 70 § 108 (1984), School Control of Asbestos; Okla. Educ. Laws 63 § 1-1711 (1984), Asbestos Removal Fund; R.I. Laws §§ 1-6-7-40 (1981), Asbestos Removal Projects.

76. New Asbestos Property Suits, New York Times, Nov. 13, 1984, at D2, col. 1.

77. Id. at col. 2.

78. Id.

79. Lexington County, South Carolina School District v. United States Gypsum, No. 82-2072-0 (Apr. 1984). See Asbestos Industry is Likely to Spend More Time in Court, Wall Street Journal, Apr. 16, 1984, at 22, col. 2. The settlement includes the costs of removing asbestos ($377,000) and punitive damages ($298,000).

80. County of Anderson v. U.S. Gypsum Co., No. 3-83-511 (E.D. Tenn. 1985).

81. Mealey's Litigation Reports, Mar. 22, 1985, at 2,005.

82. Spartanburg County School District No. 7 v. National Gypsum Co., No. 83-1744-14 (S.C. 1985).

83. Riley, S.C. School District Loses Asbestos Damage Suit, National Law Journal, Sept. 2, 1985, at 5.

84. Lewin, Class Action Set in Asbestos Cases, The New York Times, Oct. 2, 1984, at 8, col. 1. Attorneys in the class action suit have indicated that they would seek $200 million to $300 million in punitive damages from the asbestos manufacturers and $75 million to $150 million for medical monitoring.

85. In re Asbestos Litigation, No. 83-0268 (E.D. Penn. 1984).

86. See supra note 81, at col. 1. A 1983 study by the Rand Corporation showed that 63 cents of every dollar spent on asbestos litigation went for attorneys fees. See supra note 81, at col. 2.

87. Flaherty, Second Wave of Litigation Hits Asbestos, National Law Journal, Oct. 29, 1984, at 1, col. 1.

88. Id. at 23.

89. Id.

90. See supra note 15, at 22.

91. Id. at 22.

92. See supra note 84, at 23, col. 2.

93. Id. at 23, col. 2. Lawsuits have been filed by a number of schools for abatement costs and punitive damages. Some recent filings include: St. Robert Congregation v. Owens-Corning Fiberglas Corp., No. 647-656 (Milwaukee County Cir. Ct.); New York City v. Keene Corp., No. 84-44559 (N.Y. County Sup. Ct.); Baltimore County, Maryland v. Keene Corp., No. 84CG177651276 (Baltimore County Cir. Ct.); Board of Educ. of Chicago v. AC and S, Inc., No. 85-CH-00811 (Cook County Cir. Ct.); Evanston Community Consol. School Dist. v. AC and S, Inc., No. 85-CH-00812 (Cook County Cir. Ct.).

94. Anderson v. Nido, Responding to the Threat of Asbestos-Containing Materials in School Buildings, 1 Inquiry v. Analysis 2 (1982). It is important to note that in each action hundreds of schools may be represented.

95. Id. at 2. At least one state, Louisiana, has enacted a law that provides for state review of asbestos property damage suits in order to determine whether the suits have good prospects for recovery. See La. Educ. Laws § 17:3713 (1984).

96. Supra note 2, at 96.

97. Id. at 117.

98. Id. at 118.

99. Id.

100. 389 U.S. 191 (1967).

101. Id. at 204.

102. Id. at 205.

103. See supra note 15, at 7. For a detailed discussion of establishing an asbestos case in court, see supra note 2, at 84.

104. No. 80-1842 (D.N.J. May 19, 1980).

105. Asbestos Report Offers Creative Theories of Liability, Legal Times of Washington, Nov. 16, 1981, at col. 1.

106. No. B 81-0227-CA (E.D. Tex. Apr. 22, 1981).

107. See supra note 28, at 12, col. 4.

108. 493 F.2d 1076 (5th Cir. 1973).

109. Id. at 1076.

110. Id.

111. Id. at 1081.

112. Id. at 1096.

113. Id.

114. Comment, The Asbestos Tragedy: Legal Issues and the Need for Reform, 8 Univ. Dayton L. Rev. 353, 358 (1983).

115. Steinhardt v. Johns-Manville Corp., 54 N.Y.2d 1008 (1981). See also Urie v. Thompson, 337 U.S. 163 (1949) (silicosis); Wilson v. Johns-Manville Sales Corp., 684 F.2d 111 (D.C. Cir. 1982) (asbestosis); Karjala v. Johns-Manville Prods. Corp., 523 F.2d 155 (8th Cir. 1975) (asbestosis); Borel v. Fibreboard Paper Prods. Corp., 493 F.2d 1076 (5th Cir. 1973) (asbestosis and mesothelioma), cert. denied, 419 U.S. 869 (1974); Louisville Trust Co. v. Johns-Manville Prods. Corp., 580 S.W.2d 497 (Ky. 1979) (mesothelioma); Haig v. Johns-Manville Prods. Corp., 284 Md. 70, 394 A.2d 299 (1978) (mesothelioma).

116. Note, Preserving Causes of Action in Latent Disease Cases: The Locke v. Johns-Manville Corp. Date-of-the-Injury Accrual Rule, 68 Va. L. Rev. 615 (1982).

117. 221 Va. 951 (1981).

118. See supra note 111, at 355.

119. See supra note 84, at 23, col. 1.

120. Sullivan, Companies and Local Boards Sued by Jersey Teachers Over Asbestos, New York Times, Sept. 26, 1984, at B4, col. 1.

121. Id.

122. In re Asbestos Litigation Coverage Cases, Judicial Council Coordinated Proceeding No. 1072.

123. Galante, Megatrials, National Law Journal, Mar. 25, 1985, at 1, col. 1. A discussion of the insurance issues in asbestos-related problems would not be complete without mentioning the proposed asbestos claims facility. The proposal was mediated by Harry Wellington, outgoing dean of the Yale Law School. Wellington was selected to head up the asbestos negotiations in 1982 by the New York City-based Center for Public Resources, a nonprofit organization dedicated to developing alternatives to litigation. The facility is designed to arbitrate personal injury asbestos claims. In all, sixteen insurance companies and thirty-four manufacturers have pledged binding membership. Sources claim that the insurer members will provide between seventy and eighty percent of the asbestos insurance to which manufacturers claim they are entitled. Proponents of the facility state that it is a viable alternative to the contingency-fee/class-action system. For further discussion on the facility see Courting a Better Way, Wall Street Journal, Apr. 4, 1984, at 16, col. 2; Asbestos Case Center, New York Times, Mar. 1, 1985, at 33, col. 3; Wellington to Proceed With Binding Signup, Facility; Mealey's Litigation Reports, Asbestos, Mar. 8, 1985, at 1, 938.

124. New York Times, Mar. 1, 1985, at 35, col. 3.

125. Froude v. Eagle-Picher, No. 82-869 (Cal. 1985).

126. Justices Again Refuse to Settle Asbestos Case, New York Times, Mar. 8, 1983, at D1, col. 1. See Eagle-Picher Indus., Inc. v. Liberty Mut. Ins. Co., 682 F.2d 12 (1st Cir. 1982).

127. New York Times, Mar. 8, 1983, at D1, col. 1.

128. Porter v. American Optical Corp., 641 F.2d 1128 (5th Cir. 1981); Insurance Co. of N. Am. v. Forty-Eight Insulations, Inc. 633 F.2d 1212 (6th Cir. 1980); Commercial Union Ins. Co. v. Pittsburgh Corning Corp., 553 F. Supp. 425 (E.D. Pa. 1981). The Fifth Circuit is especially critical in asbestos cases. It is estimated that 39% of all federal asbestos cases have been brought in the Fifth Circuit. See National Law Journal, Feb. 2, 1985, at 3, col. 1.

129. See supra note 123, at D1, col. 2.

130. Keene Corp. v. Insurance Co. of N. Am., 667 F.2d 1034 (D.C. Cir. 1981).

131. See supra note 123, at D21, col. 1.

132. Id.

133. Id.

134. Id.

135. See supra note 54. The insurance industry, prompted by massive claims from asbestos-related diseases, is changing its basic liability policy for businesses. The new policy, called a claims-made policy, will cover a business for claims made only while a policy is in force. The previous standard policy held an insurer liable for damages caused while its policy was in force regardless of when the claim was filed. See Hilder, Insurance Industry is Changing Policy for Basic Business Liability Coverage, Wall Street Journal, Jan. 5, 1984, at 7, col. 3.

136. Id.

137. Id.

138. Davis, Acmat Loses Insurance, Cites Asbestos Claims, Wall Street Journal, Mar. 15, 1985, at 6, col. 1.

139. Id. at col. 1. The EPA offers its grant program to local school boards nominated by their states. The grant rules specify that contractors hired by the boards get liability insurance against lawsuits. See 20 U.S.C. § 4015(b)(3).

140. Fla. Pub. Lands & Prop. Laws § 255.40 (1984) Ill. Educ. Laws § 1410 (1984); Iowa Ann. Stat. § 88B.1 (1984); Md. Health & Env. Laws § 6-401 (1982); Minn. Educ. Laws § 121.151 (1984); Mont. Ann. Stat. § 50-64-103 (1984). The California Senate recently passed a law that requires companies removing asbestos from school buildings to be licensed with the state and imposes up to a $3,000 fine for the use of an unlicensed contractor performing asbestos-related work. Thursday in Sacramento, United Press International, May 10, 1985.

141. Blake Trial of Asbestos Cases to Resume, Los Angeles Times, Nov. 30, 1982, at II 2, col. 1.

142. Id. at col. 1.

143. Id. at col. 1. See also Mealey's Litigation Reports, Asbestos, Apr. 26, 1985, at 2, 141.

144. Ford, Who Will Compensate the Victims of Asbestos-Related Diseases? Manville's Chapter 11 Fuels the Fire, 14 Environmental Law 465 (1984).

145. Saginaw and Weinstein, The Manville Bankruptcy: Will Asbestos Victims Get Their Day in Court? 19 Trial 76 (1983).

146. 11 U.S.C. § 362 (1978).

147. See supra note 142, at 76.

148. See supra note 83, at 5, col. 1.

149. Id. at 5, col. 3.

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